IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 412 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

POLY STEELS (INDIA)LTD.

Appearance:

1. INCOME TAX REFERENCE No. 412 of 1992
MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 15/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax, Gujarat I, Ahmedabad.

"Whether in the facts and circumstances of the case the Tribunal was right in holding that the official liquidator of the assessee company in liquidation, who is an officer of the court and is a "public servant", while filing the return of income of the assessee company in liquidation acted in a bonafide manner and in good faith, which necessarily implies the absence of any fraud, gross or wilful negligent and was right in holding that there is no justification in sustaining the penalty levied u/s 271(1)(c) on the basis of such return of income furnished by the Official Liquidator."

2. The assessment year is 1975-76 and the relevant accounting period is the year ended on 30th September 1974. The assessee Company - M/s Poly Steels (India) Ltd. (now in liquidation) (hereinafter referred to as "the Company"), was incorporated on 27th January 1970 as a Private Limited Company under the Companies Act, 1956 in the name and style of Concast Private Limited. On or about 10th March 1971, the Company was converted into a Public Limited Company and ultimately, in June 1972, the name was changed to the present name. It appears that the Company was carrying on manufacturing activities of manufacturing billets and ingots from iron scrap, which were admittedly excisable items at the relevant time. By an order dated 1st July 1977 made by the Company Court, the Company was ordered to be wound up and the Official Liquidator attached to this High Court was appointed as liquidator of the Company under the provisions of the Companies Act, 1956.

3. The notice under Section 148 of the Act came to be served on the Official Liquidator on 30th September 1977. The Official Liquidator informed the assessing officer vide letter dated 12th January 1978 that he was not a person authorized to sign the return of income as provided under Section 140 of the Act. He, however, delivered the Annual Report containing audited balance-sheet, profit & loss account along with a statement showing computation of total income of 28th January 1978. In the forwarding letter of even date, it

was stated that the total income was worked out at Rs.30,50,605=00 subject to admissible deductions / allowances by way of depreciation, development rebate etc. In the said letter, the Official Liquidator further reiterated the fact that he was not competent to sign the return of income on behalf of the company in liquidation, and that he had moved the Company Court seeking stay of income tax proceedings till the legal position became clear. Subsequently, it appears that, on 13th February 1980, a return of income was submitted showing a total income of Rs.7,74,428=00 accompanied by a note stating the Official Liquidator is not competent to sign and verify the return of income of the company in liquidation.

4. The assessment was completed at a total income of Rs.29,92,540=00 on 31st August 1982. In the assessment order, a sum of Rs.14,05,339/- was added in respect of value of finished goods removed in a clandestine manner and not accounted for in the books of account maintained by the company. The assessing officer also initiated penalty proceedings under Sections 271(1)(c) of the Act as well as 273(a) of the Act. The said assessment was not challenged by the Official Liquidator.

5. The assessing officer imposed penalty under Section 271(1)(c) of the Act vide order dated 21st / 23rd March 1985 levying a penalty of Rs.15,18,912=00, which was the minimum i.e. 100% of the amount of tax sought to be evaded. The Official Liquidator went in appeal before the C.I.T. (Appeals), who for the reasons recorded in the appellate order dated 18th November 1985, dismissed the appeal.

6. On further appeal, the Tribunal cancelled the penalty for the reasons stated in its impugned order.

7. Mr.M.R.Bhatt, the learned senior standing counsel appears on behalf of the applicant - revenue. Though served, there is no appearance on behalf of the respondent - Company in liquidation.

8. It was submitted by Mr.Bhatt that, though the Official Liquidator may not be the person whose acts of omission or commission would lead to the company in liquidation being penalized, in tax proceedings i.e for the purposes of assessment and penalty, the authority is required to consider the case of the company in liquidation, which is a separate taxable unit. According to Mr.Bhatt, once it was established that the erstwhile management of the company in liquidation had

clandestinely removed manufactured goods, the value thereof had to be assessed in accordance with law and penal proceedings were considered necessary concomitant. He, therefore, urged that the Tribunal had erred in cancelling the penalty levied under Section 271(1)(c) of the Act.

9. As can be seen from the impugned order of the Tribunal, after narrating the facts in detail, the Tribunal has come to the conclusion that the date of default for the purposes of levy of penalty under Section 271(1)(c) of the Act is the date on which the return of income was submitted. That on the said day, namely, when the Official Liquidator submitted the return for the assessment year under consideration, there is no material or evidence on record to show that the Official Liquidator had concealed or furnished any inaccurate particulars of income arising out of any fraud or gross or wilful neglect. The Tribunal has drawn a presumption that it would be more reasonable and justifiable that the Official Liquidator, who is an officer of the Court and falls within the definition of the term "public servant" could not be ascribed with any intention or guilty mind so as to suggest that the return of income furnished by the Official Liquidator would conceal or furnish any inaccurate particulars of income of the company in liquidation. To the contrary, according to the Tribunal, there is a presumption of good faith when the return of income is submitted by an officer of the court, who is a Central Government employee. The Tribunal has appreciated the conduct of the Official Liquidator in not challenging the assessment order, despite there being disputed additions. Thus, according to the Tribunal, on the facts and in the circumstances of the case, there was absence of any guilt or intention on the part of the Official Liquidator at the time of filing of the return of income. In the conclusion, the Tribunal has found that the Official Liquidator acted in a bonafide manner and in good faith while filing the return of income of the company in liquidation, and the same necessarily implied absence of any fraud, gross or wilful neglect.

10. As can be seen from the facts which have come on record, the revenue authorities do not dispute the fact that clandestine removal of goods, if any, was done by or at the behest of erstwhile management of the Company in liquidation. In fact, in the penalty order, the assessing officer observes: "Thus, Managing Director has cheated not only Government, but the public shareholders also." Once this finding was recorded in light of the facts on record, it was not open to the assessing officer

to impose penalty for concealment and/or furnishing inaccurate particulars of income by resorting to explanation to Section 271(1)(c) of the Act on the Official Liquidator of the Company in liquidation. Therefore, the Tribunal was perfectly justified in law in deleting penalty levied under Section 271(1)(c) of the Act.

11. There being no infirmity in the impugned order of the Tribunal, the question referred is answered in the affirmative i.e. in favour of the assessee and against the revenue. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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